STAATSCOURANT
Officiële uitgave van het Koninkrijk der Nederlanden sinds 1814.
Nr. 28972
8 juni
2016

Overeenkomst tussen de bevoegde autoriteiten van Zwitserland en Nederland inzake de fiscale behandeling van de Nederlandse fiscale beleggingsinstelling en de Zwitserse Fonds Commun de Placement en de Société d'Investissement à Capital Variable

8 juni 2016
nr. IZV/2016/398M

De directeur Internationale Zaken en Verbruiksbelastingen heeft namens de staatssecretaris van Financiën het volgende besloten.

COMPETENT AUTHORITY AGREEMENT

The competent authorities of Switzerland and the Netherlands (hereinafter: 'the competent authorities') have reached the following mutual agreement regarding the application of the Convention between the Kingdom of the Netherlands and the Swiss Confederation for the avoidance of double taxation with respect to taxes on income signed at The Hague on February 26th, 2010 and the related Protocol ('the Convention') with respect to a Netherlands fiscal investment institution (*fiscale beleggingsinstelling*, 'FBI'), by a Swiss contractual fund (*fonds commun de placement,* 'FCP') and a Swiss open ended investment fund (*société d'investissement à capital variable,* 'SICAV'). This Competent Authority Agreement ('Agreement') is entered into under Article 25, paragraph 3 (Mutual Agreement Procedure) of the Convention.

Purpose of the Agreement

1. The competent authorities consider that difficulties or doubts may arise as to the application of the provisions of the Convention on items of income received by a FBI, a SICAV and a FCP (abbreviated 'CIVs').
   In this respect reference is made to the issues raised in paragraphs 6.17 to 6.20 of the OECD Commentary on Article 1 of the OECD Model Tax Convention. The purpose of this Agreement is to clarify the application of the provisions of the Convention and to establish accompanying procedures with respect to refund of withholding taxes on items of income received by the above mentioned CIVs.
   The competent authorities agree that in principle the entitlement to treaty benefits should not be restricted in case of investments through CIVs. On the other hand, the competent authorities agree that an entitlement to the benefits of the Convention that would not have been available in case of a direct investment should be avoided.

Scope of the Agreement

2. In the case of the Netherlands, the relevant vehicles are FBIs, which are regulated tax liable entities under the Dutch Corporate Income Tax Act ('Wet op de vennootschapsbelasting 1969').
   In the case of Switzerland, the relevant vehicles are FCPs as defined in Article 25 and SICAVs as defined in Article 36 of the Federal Act on Collective Investment Schemes of 23 June 2006.
3. Provided that persons who are residents according to Article 4 of the Convention of a Contracting State in which a vehicle mentioned in paragraph 2 is organised ('Residents') beneficially own more than 95% of the capital of such a vehicle, that vehicle may claim refund of the withholding tax on income derived from the other Contracting State ('Source State') under Articles 10 or 11 of the Convention.
4. Where the percentage of ownership by such Residents does not exceed 95%, the vehicles mentioned in paragraph 2 may claim of the withholding tax refund under Articles 10 or 11 of the Convention limited to that proportion of the capital of the vehicles beneficially owned by Residents.
5. The vehicle or its authorised representatives must indicate, based on data established at the due date of withholding tax in the Source State or at least once every year, and in accordance with the regulations of the Source State, the percentage of ownership of the capital of the vehicle beneficially owned by Residents. Each State may apply appropriate control mechanisms.
6. Paragraph 4 shall not limit the entitlement to treaty benefits of investors in a vehicle mentioned in paragraph 2 who are residents of a third state.
7. This agreement shall apply to all pending and future claims for refunds.

Agreed by the undersigned competent authorities:

Berne, 14.03.2016

For the Swiss Competent Authority
P. Duss
State Secretariat for International Financial Matters

The Hague, 02.03.2016

For the Netherlands Competent Authority
H. Roodbeen
Ministry of Finance